IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.Rev.Pet.No. 2727 of 2005()

CRA.248/2005 of ADDL.SESSIONS COURT (ADHOC)-II, KOTTAYAM
CC.590/2000 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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REVN. PETITIONER:

C.P.PADMANABHA PANICKER,
S/O.PADMANABHA PANICKER.K.,
KOUSTHOOBHAM, CHENGALAM VILLAGE,
KOTTAYAM.

BY ADV. SRI.MATHEWS J.NEDUMPARA
SRI.BIMAL K.NATH

RESPONDENTS: ACCUSED

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1. RAJAN, S/O.KESAVAN, THALAPPOTHRA HOUSE, CHENGALAM VILLAGE, KOTTAYAM.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SURIN GEORGE IPE
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2727 OF 2005 A

Dated this the 17th day of September, 2007

O R D E R

The revision petitioner is the defacto complainant in Crime No.79/2000 of Kumarakom Police Station. He challenges the sentence of fine imposed by the lower appellate court in modification of the sentence of rigorous imprisonment for six months for the conviction under section 324 IPC.

2. The case of the prosecution can be summarized as follows:-

The first accused is the sister's son-in-law of the defacto complainant examined as PW1. The accused had abused the wife of PW1 in filthy language. PW1 complained to the police. Infuriated by the said conduct of PW1, at about 9.00 p.m. on 21.6.2000 while PW1 was returning home the accused hid himself behind a well near the house of PW1 and when PW1 emerged he stabbed PW1 with a knife on his face uttering that he would teach him a lesson. As a result of the stab, PW1 sustained 4 inside injuries - one on the nose at philtrum, second on the dorsum of the tongue, 3rd on the upper lip and the fourth, a large haemotoma at the sub lingual region. The accused has thereby committed an

offence punishable under section 324 IPC.

3. The trial court convicted the 1st respondent of the said offence and sentenced him to rigorous imprisonment for six months. On appeal preferred by the 1st respondent herein as Criminal Appeal No.248/05 before the Additional Sessions Judge (Adhoc-II), Kottayam, that court also confirmed the conviction but modified the sentence into one of fine of Rs.5,000/- and on default to pay the fine, to suffer simple imprisonment for six months with a further direction to pay the fine amount as compensation. The only justification given by the lower appellate court for altering the sentence of imprisonment into fine was the following:-

> *" The learned counsel for the appellant submitted that the close relationship of PW1 and the accused ought to have taken note of the learned Magistrate while awarding sentence and harsh sentence of imprisonment could only break their proximity in relationship. I think that the learned counsel is right in his submission and considering the relationship of the two sides it would have been better that the sentence could have been substituted one for fine."*

4. The above observation can hardly be a valid ground for awarding the flee-bite sentence as has been imposed by the lower appellate court. The prime consideration for imposing a proper sentence by the convicting court are-

(i) The motive which impelled the accused to mount an attack on the victim;

(ii) The conduct, if any, of the victim towards the accused immediately prior to the criminal act complained of. This will indicate whether the commission of offence was provoked or unprovoked;

(iii) The weapon, if any, used for inflicting the injuries and the manner of infliction of the injuries;

(iv) The severity of the injuries inflicted on the victim;

(v) Subsequent conduct of the offender including contrition or remorse, if any, displayed by the offender;

(vi) The antecedents of the offender;

(vii) Relationship between the offender and the victim.

5. Relationship by itself cannot be the sole criteria for either taking a lenient view or for taking a harsh view on the question of sentence. It all depends on the facts and

circumstances of each case. The lower appellate court did not take into account the other relevant considerations while imposing the sentence. After hearing both sides, I am of the view that the lower appellate court has not addressed itself as to the need for imposing a proper sentence on the 1st respondent accused. Hence, the sentence imposed by the lower appellate court is set aside and the matter is remitted to that court for imposing a proper sentence according to law.

(V. RAMKUMAR, JUDGE)

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